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ATTORNEYS FOR CITIGROUP GLOBAL MARKETS REALTY CORP., BY AND THROUGH THE  
MORTGAGE SERVICING AGENT, WELLS FARGO BANK, N.A., ITS ASSIGNS AND/OR SUCCESSORS  
IN INTEREST

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

IN RE:	§	CASE NO. 09-30971-SGJ-7
MERITAGE MORTGAGE	§	CHAPTER 7
CORPORATION,	§	
DEBTOR,	§	
	§	
CITIGROUP GLOBAL MARKETS	§	A Hearing on the Motion for Relief from
REALTY CORP., BY AND THROUGH	§	the Automatic Stay set:
THE MORTGAGE SERVICING	§	May 28, 2009 at 1:30 p.m.
AGENT, WELLS FARGO BANK, N.A.,	§	
ITS ASSIGNS AND/OR SUCCESSORS	§	
IN INTEREST,	§	
MOVANTS,	§	
	§	
	§	
v.	§	
	§	
	§	
MERITAGE MORTGAGE	§	
CORPORATION, Debtor; and DANIEL	§	
J. SHERMAN, Trustee;	§	
RESPONDENT.	§	JUDGE STACEY G. JERNIGAN

**MOTION OF CITIGROUP GLOBAL MARKETS REALTY CORP., BY AND THROUGH  
THE MORTGAGE SERVICING AGENT, WELLS FARGO BANK, N.A., ITS ASSIGNS  
AND/OR SUCCESSORS IN INTEREST FOR RELIEF FROM THE AUTOMATIC STAY  
OF 11 U.S.C. §362(a) AGAINST REAL PROPERTY KNOWN AS 1237 ROSELYN  
AVENUE, S.W., CANTON, OHIO 44710**

**NOTICE – ANSWER REQUIRED**

**PURSUANT TO LOCAL BANKRUPTCY RULE 4001(b), AN ANSWER IS REQUIRED. THE TRUSTEE, IF ONE HAS BEEN APPOINTED OR THE DEBTOR SHALL FILE AN ANSWER TO ANY MOTION FOR RELIEF FROM AUTOMATIC STAY WITHIN TWELVE (12) DAYS FROM THE SERVICE OF THE MOTION.\* THE DEBTOR'S ANSWER SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED. IF THE DEBTOR DOES NOT FILE AN ANSWER AS REQUIRED, THE ALLEGATIONS IN THE CREDITOR'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY SHALL BE DEEMED ADMITTED, UNLESS GOOD CAUSE IS SHOWN WHY THESE ALLEGATIONS SHOULD NOT BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.**

**File with the court a written request for a hearing at:**

**CLERK, U. S. BANKRUPTCY COURT  
1100 Commerce Street, Room 12-A-24  
Dallas, Texas 75242-1496**

**\*Under Bankruptcy Rule 9006(e), service by mail is completed upon mailing; under Bankruptcy Rule 9006(f), three (3) days are added to the period for answer or other response when service is by mail.**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE OF SAID COURT:

COMES NOW, CITIGROUP GLOBAL MARKETS REALTY CORP., BY AND THROUGH THE MORTGAGE SERVICING AGENT, WELLS FARGO BANK, N.A., ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST (hereinafter called "CGMR"), files this Motion for Relief from the Automatic Stay of 11 U.S.C. §362(a) and in support thereof would respectfully show the Court the following:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§1334 and 157 and 11 U.S.C. §362. This is a core proceeding.
2. On or about February 17, 2009, MERITAGE MORTGAGE CORPORATION (hereinafter "Debtor"), filed its petition for relief under Chapter 7 of the Bankruptcy Code, and an Order for relief was entered.

3. At the time of Debtor filed its Petition, CGMR held a Note and Mortgage made and executed by DAVID SOKOLOUSKY and SANDRA SOKOLOUSKY dated June 30, 2006, in the original principal amount of SIXTY THOUSAND DOLLARS (\$60,000.00) with interest thereon, on real estate with all improvements described as follows:

SITUATED IN THE CITY OF CANTON, COUNTY OF STARK AND STATE OF OHIO:

AND KNOWN AS AND BEING LOT NO. 21730 IN THE CITY OF CANTON, STARK COUNTY, OHIO

BE THE SAME MORE OR LESS, BUT SUBJECT TO ALL LEGAL HIGHWAYS.

PROPERTY ADDRESS: 1237 ROSLYN AVENUE, S.W., CANTON OHIO 44710

PARCEL NUMBER: 02-31615

(hereinafter, the "Property"). A true and correct copy of the Note and Mortgage are attached hereto as Exhibit "A" and incorporated herein by reference. Debtor originated the loan that resulted in the Note and Mortgage. CGMR received an assignment of the Note and Mortgage evidenced by an instrument originally recorded in Stark County, Ohio on or about May 3, 2007 under local recording instrument number 200705030024330. A corrective assignment to correctly state CGMR as assignee was filed in the same county on or about August 28, 2007 under local recording instrument number 200708280047229.

4. On March 20, 2007, CGMR filed a Complaint in the Court of Common Pleas, Stark County, Ohio alleging the note and mortgage DAVID L. SOKOLOUSKY and SANDRA SOKOLOUSKY executed constitutes a valid first lien on the Property and

seeking a judgment to foreclose on the Property. A copy of the complaint is attached hereto as Exhibit "B" and incorporated herein by reference. Debtor listed the pending litigation and its schedule F as an unknown unsecured claim and in its statement of financial affairs paragraph 4.

5. The Sokolouskys, defendants in that suit, answered and asserted counterclaims and third-party claims against multiple parties, including the Debtor. A copy of the answer is attached hereto as Exhibit "C" and incorporated herein by reference.
6. The judicial foreclosure action is ongoing but has been stopped due to the instant bankruptcy filing.
7. Based upon the foregoing, CGMR requests that the Court to lift the automatic stay of 11 U.S.C. 362(a) so CGMR may proceed with its judicial foreclosure action in Ohio State Court.
8. CGMR further requests that the provision of Bankruptcy Rule 4001(a) (3) be waived and any order terminating the automatic stay should be effective immediately.

**WHEREFORE**, CGMR prays that this court enter an order after notice and hearing terminating the automatic stay as to Movant; Movant further prays that the Court waive the provision of Rule 4001(a)(3) and that CITIGROUP GLOBAL MARKETS REALTY CORP., BY AND THROUGH THE MORTGAGE SERVICING AGENT, WELLS FARGO BANK, N.A., ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST be permitted to immediately enforce and implement any order granting relief from the automatic stay; and that Movant be granted such other and further relief as is just.

Respectfully submitted,

**BARRETT DAFFIN FRAPPIER  
TURNER & ENGEL, L.L.P.**

BY: /s/ Shawn I. Carter 5/4/09  
SHAWN CARTER  
TBA NO. 24031802  
Barrett Daffin Frappier  
Turner & Engel  
15000 Surveyor Blvd., Suite 1600  
Addison, Texas 75001  
Telephone: (972) 386-5040  
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Email: [txndauto@bbwcd.com](mailto:txndauto@bbwcd.com)  
ATTORNEY FOR MOVANT

**CERTIFICATE OF CONFERENCE**

I, the undersigned, hereby certify that prior to the filing of this Motion, I did the following:

1. Conferred with Debtor's counsel pursuant to the District Court Local Rule 7.1 (a) and N.D. TX Local Bankruptcy Rule 9014.1 (c)(1) and
2. Debtor's counsel response:

- X Debtor does not oppose Movant's Motion; or
- My office made a good faith effort to negotiate a settlement of the dispute with the Debtor's counsel but was unable to settle same; or
- Although I left a message for Debtor's counsel to call me regarding the Motion, Debtor's counsel has not returned my call by the second business day after such contact.

Notes: 3/24/09 – 1:28 p.m.; Shawn Carter spoke to Beth Smith regarding the motion and she stated the Debtor is not opposed to the relief being sought. 5/5/09 – 11:00 a.m.; Shawn Carter spoke to the Chapter 7 Trustee and he stated he is not opposed to the relief being sought.

/s/ Shawn Carter 5/4/09  
SHAWN I. CARTER

**Preliminary Hearings; Dallas Division.** Absent compelling circumstances, evidence presented at preliminary hearings in the Dallas Division on motions for relief from the automatic stay will be by affidavit only. The party requesting the hearing must serve evidentiary affidavits at least 7 days in advance of such hearing; the responding party must serve evidentiary affidavits at least 48 hours in advance of such hearing; the party requesting the hearing is responsible for making sure all other hearing participants known to such party are aware of this Rule. Failure of an attorney to attend a scheduled and noticed preliminary hearing may be grounds for default relief regardless of the presence or absence of affidavits.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion of CITIGROUP GLOBAL MARKETS REALTY CORP., BY AND THROUGH THE MORTGAGE SERVICING AGENT, WELLS FARGO BANK, N.A., ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST for Relief from Stay was electronically filed and served on the same day electronically or by First Class U.S. Mail, postage paid, in accordance with the Bankruptcy Rules to the following:

**ELECTRONICALLY OR BY REGULAR FIRST CLASS U.S. MAIL, POSTAGE PREPAID:**

Debtors:

Meritage Mortgage Corporation  
1601 Bryan Street, Suite 19034  
Dallas, Texas 75201

Parties in Interest:

David L. Sokolousky  
Sandra Sokolousky  
1237 Roslyn Avenue, S.W.  
Canton, Ohio 44710

Attorney for Sokolousky:

Todd L. Willis  
670 W. Market Street  
Akron, Ohio 44303-1414

Debtors' Attorney:

Elizabeth Grace Smith  
6655 First Park Ten, Suite 250  
San Antonio, Texas 78213

U.S. Trustee:

UST U.S. Trustee  
1100 Commerce Street  
Room 976  
Dallas, Texas 75242-1496

Chapter 7 Trustee:

Daniel J. Sherman  
509 N. Montclair  
Dallas, Texas 75208

/s/ Shawn Carter 5/4/09  
SHAWN CARTER